

**54-5-1.5. Special regulation fee -- Supplemental Levy Committee --
Supplemental fee -- Fee for electrical cooperatives.**

(1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.

(b) The special fee is in addition to any charge now assessed, levied, or required by law.

(2) (a) The executive director of the Department of Commerce shall determine the special fee for the Department of Commerce.

(b) The chair of the Public Service Commission shall determine the special fee for the Public Service Commission.

(c) The fee shall be assessed as a uniform percentage of the gross operating revenue for the preceding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business. Gross operating revenue shall not include income to a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.

(3) (a) The executive director of the Department of Commerce shall notify each public utility subject to the provisions of this chapter of the amount of the fee.

(b) The fee is due and payable on or before July 1 of each year.

(4) (a) It is the intent of the Legislature that the public utilities provide all of the funds for the administration, support, and maintenance of:

(i) the Public Service Commission;

(ii) state agencies within the Department of Commerce involved in the regulation of public utilities; and

(iii) expenditures by the attorney general for utility regulation.

(b) Notwithstanding Subsection (4)(a), the fee imposed by Subsection (1) shall not exceed the greater of:

(i) (A) for a public utility other than an electrical cooperative, .3% of the public utility's gross operating revenues for the preceding calendar year; or

(B) for an electrical cooperative, .15% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) \$50.

(5) (a) There is created a Supplemental Levy Committee to levy additional assessments on public utilities when unanticipated costs of regulation occur in any fiscal year.

(b) The Supplemental Levy Committee shall consist of:

(i) one member selected by the executive director of the Department of Commerce;

(ii) one member selected by the chairman of the Public Service Commission;

(iii) two members selected by the three public utilities that paid the largest percent of the current regulatory fee; and

(iv) one member selected by the four appointed members.

(c) (i) The members of the Supplemental Levy Committee shall be selected within 10 working days after the executive director of the Department of Commerce gives written notice to the Public Service Commission and the public utilities that a supplemental levy committee is needed.

(ii) If the members of the Supplemental Levy Committee have not been appointed within the time prescribed, the governor shall appoint the members of the Supplemental Levy Committee.

(d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated utilities for the purpose of defraying any increased cost of regulation.

(ii) The supplemental fee imposed upon the utilities shall equal a percentage of their gross operating revenue for the preceding calendar year.

(iii) The aggregate of all fees, including any supplemental fees assessed, shall not exceed .3% of the gross operating revenue of the utilities assessed for the preceding calendar year.

(iv) Payment of the supplemental fee is due within 30 days after receipt of the assessment.

(v) The utility may, within 10 days after receipt of assessment, request a hearing before the Public Service Commission if it questions the need for, or the reasonableness of, the supplemental fee.

(e) (i) Any supplemental fee collected to defray the cost of regulation shall be transferred to the state treasurer as a departmental collection according to the provisions of Section 63J-1-104.

(ii) Supplemental fees are excess collections, credited according to the procedures of Section 63J-1-104.

(iii) Charges billed to the Department of Commerce by any other state department, institution, or agency for services rendered in connection with regulation of a utility shall be credited by the state treasurer from the special or supplemental fees collected to the appropriations account of the entity providing that service according to the procedures provided in Title 63J, Chapter 1, Budgetary Procedures Act.

(6) (a) For purposes of this section, "electrical cooperative" means:

(i) a distribution electrical cooperative; or

(ii) a wholesale electrical cooperative.

(b) Subject to Subsection (6)(c), if the regulation of one or more electrical cooperatives causes unanticipated costs of regulation in a fiscal year, the commission may impose a supplemental fee on the one or more electrical cooperatives in this state responsible for the increased cost of regulation.

(c) The aggregate of all fees imposed under this section on an electrical cooperative in a calendar year shall not exceed the greater of:

(i) .3% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) \$50.

Amended by Chapter 183, 2009 General Session

54-5-2. How gross operating revenue is determined.

(1) Gross operating revenues of public utilities shall be determined by the executive director of the Department of Commerce from:

(a) the annual gross revenue reports filed with the Public Service Commission;
and

(b) other sources of information as the Public Service Commission may by rule prescribe.

(2) If any public utility liable for the payment of the fee assessed under Section 54-5-1.5 fails to file a report showing its gross operating revenue from business derived from its operations within the state for the preceding calendar year on or before April 15th, the executive director of the Department of Commerce shall:

(a) compute or make an estimate of the amount of the fee to be paid by the utility from available information, records, and data; and

(b) assess the fee against the utility.

Amended by Chapter 214, 1993 General Session

54-5-3. Default in payment of fee -- Procedure to collect -- Penalties.

(1) If the public utility fee is due and the payment is in default, a lien in the amount of the fee may be filed against the property of the utility and may be foreclosed in an action brought by the executive director of the Department of Commerce in the district court of any county in which property of the delinquent utility is located.

(2) (a) If the fee computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The executive director of the Department of Commerce shall transmit the name of the utility to the Public Service Commission, which may immediately enter an order suspending the operating rights of the utility.

Amended by Chapter 214, 1993 General Session

54-5-4. Penalties.

Any person or corporation which exercises or attempts to exercise any right or privilege as any such utility during the period for which the operating rights of any such utility are suspended as provided in Section 54-5-3 is guilty of a misdemeanor. Each day's violation shall constitute a separate offense. Jurisdiction of such offense shall be held to be in any county in which any part of such transaction of business occurred. Every contract made in violation of this section is unenforceable by such corporation or person.

No Change Since 1953